279983

A
T
C

Anil Mathur
President & Chief Executive Officer

Alaska Tanker Company, LLC
15400 NW Greenbrier Parkway
Parkside Building, Suite A400
Beaverton, OR 97006

503-207-0046
Fax 503-207-0063
E-mail: Anil.Mathur@aktanker.com

May 4, 2004

Docket Management Facility
USCG-2003-14472 & MARAD-2003-15171
U.S. Department of Transportation
Rm. PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590

USCG-2003-14472-40
MARAD-2003-15171-39

Ladies & Gentlemen:

Thank you for the opportunity to comment on the Joint Notice of Proposed Rulemaking. This is an important subject for Alaska Tanker Company, LLC (ATC) since ATC operates vessels in the coastwise trade that will be replaced with vessels that will be issued coastwise endorsements pursuant to 46 U.S.C. § 12106(e).

ATC is a joint operating company of tank vessels that is qualified under Section 2 of the Shipping Act, 1916, as amended to operate vessels in the coastwise trade. ATC currently operates vessels under bareboat charter in the Alaska North Slope crude oil trade. ATC has been operating tankers in this trade since April 1999. The ATC fleet is currently comprised of 8 utankers. Pursuant to the Oil Pollution Act of 1990, most of these vessels will have to be replaced within the next several years. Thus, ATC's future as a ship operator and manager in the coastwise trade depends on owners of coastwise-qualified vessels being able to finance new construction replacement vessels.

The orderly retirement of ATC-operated vessels consistent with their OPA phase out dates will be possible as a result of the order of four Alaska Class Tankers by BP Oil Shipping Company, USA from the National Steel and Shipbuilding Company (NASSCO) in San Diego, California. The total cost of this project is nearly $1 billion. The Alaska Class Tankers are designed to be the safest large tank vessels ever built for the purpose of transporting crude oil from Valdez, Alaska to the West Coast of the United States.

Financing of these Alaska Class Tankers is being provided by BP, and BP Oil Shipping Company, USA will be the eventual owner of the vessels which will be issued coastwise endorsements pursuant to 46 U.S.C. § 12106(e). The vessels will be demise chartered to ATC. ATC will operate the vessels. ATC will time charter the vessels to a BP affiliate for the carriage of predominantly BP proprietary cargo.

ATC believes that this type of lease financing is the type envisioned by the Coast Guard Authorization Act of 1996 and by the Coast Guard when it promulgated is final regulations on February 4, 2004. Congress clearly intended to "broaden the sources of capital for U.S. vessels engaged in the coastwise trade by creating new lease-financing options without changing the basic tenant that the vessels operated in domestic trades must be built in United States shipyards and be operated and controlled by U.S. citizens." In so doing, Congress anticipated that the financing could be by persons other than banks or financial institutions.

BP's financing fits this mold exactly. The Alaska Class Tankers are being built in a U.S. shipyard to be operated and controlled by ATC, which is a U.S. citizen. Therefore, the financing and use of these new tankers should not be restricted by regulation.

Helping vessel owners find new and appropriate sources of such financing was the underlying purpose of the lease financing provision enacted by Congress in 1996. ATC supports the continued use of this provision and is concerned that the proposed joint regulations are too restrictive to be consistent with the underlying purpose and intent of the law.

In particular, the Coast Guard has proposed invalidating coastwise endorsements issued to vessels under the lease financing provision if the vessel is time chartered to an affiliate of the vessel owner. Such a measure would have disastrous consequences for the financing of the Alaska Class Tankers since that financing depends on having such a time charter.

ATC acknowledges that the Coast Guard has provided for an exclusion for the carriage of proprietary cargoes. However, such an exclusion, limited only to proprietary cargoes, is too narrow and will be overly burdensome and restrictive in the Alaska crude oil trade. Although BP-owned vessels are likely to be transporting predominantly BP-owned cargoes, shippers of crude oil frequently swap cargoes, even while the cargo is on board the vessel, to ensure orderly arrival of cargoes at refineries. Moreover, contingencies may occur, such as the temporary closure of the Trans-Alaska Pipeline, that would necessitate Alaska crude oil tankers being used to transport non-proprietary cargoes. ATC therefore recommends that the Coast Guard be judicious in its approach and, if it decides to proceed with restrictions on time charters, that it adopt a reasonable exclusion for proprietary cargoes as proposed by BP.

As the U.S. Maritime Administration is well aware, MARAD undertook rigorous scrutiny of every aspect of ATC's formation in 1999, including the limited liability company agreement, the time charters and the bareboat charters. MARAD was satisfied that ATC is indeed a Section 2 U.S. citizen in every sense of the term and is independent of foreign influence or control. Under the circumstances, both the Coast Guard and MARAD should ensure that a rule does not undo these approvals by effectively prohibiting or restricting these arrangements even though they have been reviewed and found not to present any citizenship threat.

Even if this were not enough assurance, there is another layer of comfort the agencies should derive from the fact that the Alaska Class Tankers are objectives of BP's capital construction fund program with MARAD. That long-standing program has been reviewed and approved by MARAD and continues under MARAD's scrutiny. These various levels of review show, even if the Coast Guard proceeds with time charter restrictions, that the BP-ATC arrangement should be exempted since it fulfills the purposes of the lease finance provision and comports with all Jones Act principles.

ATC also notes that the Coast Guard is considering limiting the "grandfather" provision applicable to vessels documented under the lease finance provision prior to February 4, 2004 or delivered after February 4, 2004 pursuant to a construction contract entered into prior to February 4. The latter grandfather would only apply if the owner had obtained a "letter ruling" from the Coast Guard prior to February 4. ATC encourages the Coast Guard to consider equivalents to letter rulings if it is necessary to have the Alaska Class Tankers encompassed in this grandfather. For example, the inclusion of a tanker under a capital construction fund agreement with MARAD prior to February 4, 2004 should serve as such an equivalent.

The Alaska Class Tankers are essential to United States energy security. They will transport approximately 500,000 barrels per day of crude oil from the Alaska North Slope Oil terminal in Valdez, Alaska to the U.S. West Coast. If Alternative No. 2 in the proposed Coast Guard regulation is adopted in its current form it will prohibit the current financing arrangement for the Alaska Class Tankers. Construction of these tankers was arranged under the rules then in effect. ATC respectfully urges the Coast Guard and MARAD to ensure that the proposed rules are not so overly restrictive as to affect the financing of the Alaska Class Tankers and to protect the reasonable expectation of BP in its financing and vessel ownership plans.

Very truly yours,

Anil Mathur

Anil Mathur
President and CEO